



Senate

General Assembly

File No. 809

January Session, 2007

Substitute Senate Bill No. 1183

Senate, May 9, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE PENSIONS OF STATE AND MUNICIPAL EMPLOYEES OR PUBLIC OFFICIALS CONVICTED OF FRAUD OR CORRUPTION AND THE PROTECTION OF WHISTLEBLOWERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) As used in sections 1 to 3,
2 inclusive, of this act:

3 (1) "Public official" means public official, as defined in section 1-79
4 of the general statutes, a judge of any court either elected or appointed,
5 and any elected or appointed municipal official;

6 (2) "State or municipal employee" means state employee, as defined
7 in section 5-154 of the general statutes, and includes an employee of
8 any quasi-public agency, as defined in section 1-120 of the general
9 statutes, or any person, whether appointed, elected or under contract,
10 who provides services for a city, town or other political subdivision for
11 which a pension or other retirement benefit is provided; and

12 (3) "Crime related to state or municipal office" means any of the
13 following criminal offenses committed by a person while serving as a

14 public official or state or municipal employee:

15 (A) The committing, aiding or abetting of an embezzlement of
16 public funds from the state, a municipality or a quasi-public agency;

17 (B) The committing, aiding or abetting of any felonious theft from
18 the state, a municipality or a quasi-public agency;

19 (C) Bribery in connection with service as a public official or state or
20 municipal employee; or

21 (D) The committing of any felony by such person who, wilfully and
22 with the intent to defraud, realizes or obtains, or attempts to realize or
23 obtain, a profit, gain or advantage for himself or herself or for some
24 other person, through the use or attempted use of the power, rights,
25 privileges or duties of his or her position as a public official or state or
26 municipal employee.

27 Sec. 2. (NEW) (*Effective from passage*) (a) (1) Notwithstanding any
28 provision of the general statutes, if any person is convicted or pleads
29 guilty or nolo contendere to any crime related to state or municipal
30 office in Superior Court, the court, as part of the sentence imposed,
31 may revoke or reduce any retirement or other benefit or payment of
32 any kind to which such person is otherwise entitled under the general
33 statutes for service as a public official or state or municipal employee.

34 (2) Notwithstanding any provision of the general statutes, if any
35 person is convicted or pleads guilty or nolo contendere to any crime
36 related to state or municipal office in federal court, the Attorney
37 General may apply to the Superior Court for an order to revoke or
38 reduce any retirement or other benefit or payment of any kind to
39 which such person is otherwise entitled under the general statutes for
40 service as a public official or state or municipal employee.

41 (b) In determining whether the retirement or other benefit or
42 payment shall be revoked or reduced, the Superior Court shall
43 consider and make findings on the following factors:

44 (1) The severity of the crime related to state or municipal office for
45 which the person has been convicted or to which the person has pled
46 guilty or nolo contendere;

47 (2) The amount of monetary loss suffered by the state, a
48 municipality or a quasi-public agency or by any other person as a
49 result of the crime related to state or municipal office;

50 (3) The degree of public trust reposed in the person by virtue of the
51 person's position as a public official or state or municipal employee;

52 (4) If the crime related to state or municipal office was part of a
53 fraudulent scheme against the state or a municipality, the role of the
54 person in the fraudulent scheme against the state or a municipality;

55 (5) Whether such person voluntarily provided information to the
56 state pursuant to section 4-61dd of the general statutes regarding fraud
57 against the state that was connected to the crime related to state or
58 municipal office for which such person was convicted and whether
59 such information was provided prior to such person's knowledge of
60 any criminal investigation into the crime related to state or municipal
61 office; and

62 (6) Any such other factors as, in the judgment of the Superior Court,
63 justice may require.

64 (c) If the Superior Court determines that a retirement or other
65 benefit or payment of a person should be revoked or reduced, it may,
66 after taking into consideration the financial needs and resources of any
67 innocent spouse, dependents and designated beneficiaries of the
68 person, order that some or all of the revoked or reduced benefit or
69 payment be paid to any such innocent spouse, dependent or
70 beneficiary as justice may require.

71 (d) If the Superior Court determines that the retirement or other
72 benefit or payment of such person should not be revoked or reduced, it
73 shall order that the retirement or other benefit or payment be made to
74 such person.

75 Sec. 3. (NEW) (*Effective from passage*) (a) Any person whose
76 retirement or other benefits or payments are revoked pursuant to
77 section 2 of this act shall be entitled to a return of his or her
78 contribution paid into the relevant pension fund, without interest.

79 (b) Notwithstanding the provisions of subsection (a) of this section,
80 no payments in return of contributions shall be made or ordered
81 unless and until the Superior Court determines that the person whose
82 retirement or other benefits or payments have been revoked pursuant
83 to section 2 of this act has satisfied in full any judgments or orders
84 rendered by any court of competent jurisdiction for the payment of
85 restitution to the state or a municipality for losses incurred as a result
86 of the crime related to state or municipal office. If the Superior Court
87 determines that the person whose retirement or other benefits or
88 payments have been revoked under section 2 of this act has failed to
89 satisfy any outstanding judgment or order of restitution rendered by
90 any court of competent jurisdiction, it may order that any funds
91 otherwise due to such person as a return of contribution, or any
92 portion thereof, be paid in satisfaction of the judgment or order.

93 (c) No provision of section 2 of this act or this section shall be
94 construed to prohibit or limit any payment made pursuant to a
95 qualified domestic relations order by: (1) Any public official or state or
96 municipal employee who is convicted or pleads guilty or nolo
97 contendere to any crime related to state or municipal office; or (2) any
98 state or municipal agency responsible for the administration of such
99 payment on behalf of such public official or state or municipal
100 employee.

101 Sec. 4. Section 4-61dd of the general statutes is repealed and the
102 following is substituted in lieu thereof (*Effective October 1, 2007*):

103 (a) Any person having knowledge of any matter involving
104 corruption, unethical practices, violation of state laws or regulations,
105 mismanagement, gross waste of funds, abuse of authority or danger to
106 the public safety occurring in any state or municipal department or
107 agency or any quasi-public agency, as defined in section 1-120, or any

108 person having knowledge of any matter involving corruption,
109 violation of state or federal laws or regulations, gross waste of funds,
110 abuse of authority or danger to the public safety occurring in any large
111 state contract, may transmit all facts and information in such person's
112 possession concerning such matter to the Auditors of Public Accounts.
113 The Auditors of Public Accounts shall review such matter and report
114 their findings and any recommendations to the Attorney General.
115 Upon receiving such a report, the Attorney General shall make such
116 investigation as the Attorney General deems proper regarding such
117 report and any other information that may be reasonably derived from
118 such report. Prior to conducting an investigation of any information
119 that may be reasonably derived from such report, the Attorney
120 General shall consult with the Auditors of Public Accounts concerning
121 the relationship of such additional information to the report that has
122 been issued pursuant to this subsection. Any such subsequent
123 investigation deemed appropriate by the Attorney General shall only
124 be conducted with the concurrence and assistance of the Auditors of
125 Public Accounts. At the request of the Attorney General or on their
126 own initiative, the auditors shall assist in the investigation. The
127 Attorney General shall have power to summon witnesses, require the
128 production of any necessary books, papers or other documents and
129 administer oaths to witnesses, where necessary, for the purpose of an
130 investigation pursuant to this section. Upon the conclusion of the
131 investigation, the Attorney General shall where necessary, report any
132 findings to the Governor, or in matters involving criminal activity, to
133 the Chief State's Attorney. In addition to the exempt records provision
134 of section 1-210, the Auditors of Public Accounts and the Attorney
135 General shall not, after receipt of any information from a person under
136 the provisions of this section, disclose the identity of such person,
137 [without such person's consent unless the Auditors of Public Accounts
138 or the Attorney General determines that such disclosure is
139 unavoidable, and may withhold records of such investigation, during
140 the pendency of the investigation.]

141 (b) (1) No state or municipal officer or employee, as defined in
142 section 4-141, no quasi-public agency officer or employee, no officer or

143 employee of a large state contractor and no appointing authority shall
144 take or threaten to take any personnel action against any state,
145 municipal or quasi-public agency employee or any employee of a large
146 state contractor in retaliation for such employee's or contractor's
147 disclosure of information to (A) an employee of the Auditors of Public
148 Accounts or the Attorney General under the provisions of subsection
149 (a) of this section; (B) an employee of the state or municipal agency or
150 quasi-public agency where such state or municipal officer or employee
151 is employed; (C) an employee of a state agency pursuant to a
152 mandated reporter statute; or (D) in the case of a large state contractor,
153 an employee of the contracting state agency concerning information
154 involving the large state contract.

155 (2) If a state, municipal or quasi-public agency employee or an
156 employee of a large state contractor alleges that a personnel action has
157 been threatened or taken in violation of subdivision (1) of this
158 subsection, the employee may notify the Attorney General, who shall
159 investigate pursuant to subsection (a) of this section.

160 (3) (A) Not later than thirty days after learning of the specific
161 incident giving rise to a claim that a personnel action has been
162 threatened or has occurred in violation of subdivision (1) of this
163 subsection, a state, municipal or quasi-public agency employee, an
164 employee of a large state contractor or the employee's attorney may
165 file a complaint concerning such personnel action with the Chief
166 Human Rights Referee designated under section 46a-57. The Chief
167 Human Rights Referee shall assign the complaint to a human rights
168 referee appointed under section 46a-57, who shall conduct a hearing
169 and issue a decision concerning whether the officer or employee taking
170 or threatening to take the personnel action violated any provision of
171 this section. If the human rights referee finds such a violation, the
172 referee may award the aggrieved employee reinstatement to the
173 employee's former position, back pay and reestablishment of any
174 employee benefits for which the employee would otherwise have been
175 eligible if such violation had not occurred, reasonable attorneys' fees,
176 and any other damages. For the purposes of this subsection, such

177 human rights referee shall act as an independent hearing officer. The
178 decision of a human rights referee under this subsection may be
179 appealed by any person who was a party at such hearing, in
180 accordance with the provisions of section 4-183.

181 (B) The Chief Human Rights Referee shall adopt regulations, in
182 accordance with the provisions of chapter 54, establishing the
183 procedure for filing complaints and noticing and conducting hearings
184 under subparagraph (A) of this subdivision.

185 (4) As an alternative to the provisions of subdivisions (2) and (3) of
186 this subsection: (A) A state or quasi-public agency employee who
187 alleges that a personnel action has been threatened or taken may file an
188 appeal not later than thirty days after learning of the specific incident
189 giving rise to such claim with the Employees' Review Board under
190 section 5-202, or, in the case of a state, municipal or quasi-public
191 agency employee covered by a collective bargaining contract, in
192 accordance with the procedure provided by such contract; or (B) an
193 employee of a large state contractor alleging that such action has been
194 threatened or taken may, after exhausting all available administrative
195 remedies, bring a civil action in accordance with the provisions of
196 subsection (c) of section 31-51m.

197 (5) In any proceeding under subdivision (2), (3) or (4) of this
198 subsection concerning a personnel action taken or threatened against
199 any state, municipal or quasi-public agency employee or any employee
200 of a large state contractor, which personnel action occurs not later than
201 one year after the employee first transmits facts and information
202 concerning a matter under subsection (a) of this section to the Auditors
203 of Public Accounts or the Attorney General, there shall be a rebuttable
204 presumption that the personnel action is in retaliation for the action
205 taken by the employee under subsection (a) of this section.

206 (6) If a state officer or employee, as defined in section 4-141, a quasi-
207 public agency officer or employee, an officer or employee of a large
208 state contractor or an appointing authority takes or threatens to take
209 any action to impede, fail to renew or cancel a contract between a state

210 agency and a large state contractor, or between a large state contractor
211 and its subcontractor, in retaliation for the disclosure of information
212 pursuant to subsection (a) of this section to any agency listed in
213 subdivision (1) of this subsection, such affected agency, contractor or
214 subcontractor may, not later than ninety days after learning of such
215 action, threat or failure to renew, bring a civil action in the superior
216 court for the judicial district of Hartford to recover damages, attorney's
217 fees and costs.

218 (c) Any employee of a state, municipal or quasi-public agency or
219 large state contractor, who is found to have knowingly and maliciously
220 made false charges under subsection (a) of this section, shall be subject
221 to disciplinary action by such employee's appointing authority up to
222 and including dismissal. In the case of a state or quasi-public agency
223 employee, such action shall be subject to appeal to the Employees'
224 Review Board in accordance with section 5-202, or in the case of state,
225 municipal or quasi-public agency employees included in collective
226 bargaining contracts, the procedure provided by such contracts.

227 (d) On or before September first, annually, the Auditors of Public
228 Accounts shall submit to the clerk of each house of the General
229 Assembly a report indicating the number of matters for which facts
230 and information were transmitted to the auditors pursuant to this
231 section during the preceding state fiscal year and the disposition of
232 each such matter.

233 (e) Each contract between a state or quasi-public agency and a large
234 state contractor shall provide that, if an officer, employee or
235 appointing authority of a large state contractor takes or threatens to
236 take any personnel action against any employee of the contractor in
237 retaliation for such employee's disclosure of information to any
238 employee of the contracting state or quasi-public agency or the
239 Auditors of Public Accounts or the Attorney General under the
240 provisions of subsection (a) of this section, the contractor shall be liable
241 for a civil penalty of not more than five thousand dollars for each
242 offense, up to a maximum of twenty per cent of the value of the

243 contract. Each violation shall be a separate and distinct offense and in
 244 the case of a continuing violation each calendar day's continuance of
 245 the violation shall be deemed to be a separate and distinct offense. The
 246 executive head of the state or quasi-public agency may request the
 247 Attorney General to bring a civil action in the superior court for the
 248 judicial district of Hartford to seek imposition and recovery of such
 249 civil penalty.

250 (f) Each large state contractor shall post a notice of the provisions of
 251 this section relating to large state contractors in a conspicuous place
 252 which is readily available for viewing by the employees of the
 253 contractor.

254 (g) No person who, in good faith, discloses information to the
 255 Auditors of Public Accounts or the Attorney General in accordance
 256 with this section shall be liable for any civil damages resulting from
 257 such good faith disclosure.

258 (h) As used in this section:

259 (1) "Large state contract" means a contract between an entity and a
 260 state or quasi-public agency, having a value of five million dollars or
 261 more; and

262 (2) "Large state contractor" means an entity that has entered into a
 263 large state contract with a state or quasi-public agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>October 1, 2007</i>	4-61dd

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Auditors	GF - Cost	560,000 - 1,120,000	560,000 - 1,120,000
Comptroller Misc. Accounts (Fringe Benefits for new Auditor Positions)	GF - Cost	144,480 - 288,960	337,120 - 674,240
Comptroller Misc. Accounts (Fringe Benefits)	Various – Potential Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Potential Savings	See Below	See Below

Explanation

Extending whistleblower protections to municipal whistleblowers will result in a significant cost to the Auditors of Public Accounts. The Auditors annually expend approximately 8,800 staff hours reviewing 120 state whistleblower complaints. This translates to the equivalent of 5 full-time auditors dedicated to state whistleblower complaints. It is estimated that the Auditors could review 200 to 400 municipal whistleblower complaints each year. Depending on the number of complaints received, the Auditors will need 8 to 16 new positions, at approximately \$70,000 per position (plus fringe benefits¹), to handle

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The

municipal whistleblower complaints. The cost to the Auditors could range from \$560,000 - \$1,120,000 annually.

The revocation or reduction of retirement or other benefits permitted under the bill may result in a savings to the fringe benefit accounts administered by the Office of the State Comptroller and the state employees and municipal employee retirement funds. Any state or municipal savings would be dependent upon the degree to which such retirement and other benefits are reduced.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

OLR Bill Analysis**sSB 1183*****AN ACT CONCERNING THE PENSIONS OF STATE AND MUNICIPAL EMPLOYEES OR PUBLIC OFFICIALS CONVICTED OF FRAUD OR CORRUPTION AND THE PROTECTION OF WHISTLEBLOWERS.*****SUMMARY:**

With one exception, this bill permits state courts to revoke or reduce any retirement or other benefit due to state or municipal public officials or employees when sentencing them for certain crimes related to their employment. The exception is that no revocation or reduction prohibits or limits benefits that are the subject of a qualified domestic relations order (e.g., child support). The bill specifies the factors courts must consider when making this decision.

If an official's or employee's pension is revoked, the bill entitles him or her, under certain circumstances, to the return of any contributions he or she made to it, without interest.

The bill requires the court to order payment of any benefit or payment that is not revoked or reduced.

Lastly, the bill extends to municipal whistleblowers protections currently enjoyed by state employees who report corruption, unethical practices, violations of state law or regulation, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state or quasi-public agency or large state contract. It bans the state auditors and attorney general from disclosing a whistleblower's identity at any time. Under current law they may disclose the identity of state, quasi-public agency, and large state contract whistleblowers (1) at any time with consent and (2) without consent whenever disclosure is unavoidable during the course of the investigation.

EFFECTIVE DATE: Upon passage, except that the whistleblower provisions are effective on October 1, 2007.

CRIMES RELATED TO OFFICE OR EMPLOYMENT

The bill allows the Superior Court to revoke or reduce the benefits of any public official or employee who is convicted or pleads guilty or *nolo contendere* (no contest) to:

1. committing or aiding or abetting the embezzlement of public funds from the state, a municipality, or a quasi-public agency;
2. committing or aiding or abetting any felonious theft from the state, a municipality, or a quasi-public agency;
3. bribery connected to his or her role as a public official or employee; or
4. felonies committed willfully and with intent to defraud to obtain or attempt to obtain an advantage for himself or herself or others through the use or attempted use of his or her office.

If the public official or employee pleads guilty or *nolo contendere* to one of these crimes in federal court, the bill permits the attorney general to apply to the Superior Court for an order to revoke or reduce his or her benefits.

“Public officials” are statewide elected officers; legislators and legislators-elect; judges; gubernatorial appointees, including their appointees; municipal elected and appointed officials; public members and union representatives on the Investment Advisory Council; quasi-public agency members and directors; and people appointed or elected by the General Assembly or either chamber. The term does not include advisory board members or members of Congress. “State employees” includes employees of quasi-public agencies.

SENTENCING CONSIDERATIONS

When determining whether to revoke or reduce a public official’s or employee’s benefits or payments, the bill requires the court to

consider:

1. the severity of the crime;
2. the amount of money the state, municipality, quasi-public agency, or anyone else lost as a result of the crime;
3. the degree of public trust reposed in the person by virtue of his position;
4. if the crime was part of a fraudulent scheme against the state or a municipality, the defendant's role in it;
5. whether the person cooperated with the state as a whistleblower before knowing of the criminal investigation; and
6. any other factors the court determines that justice requires.

The court must consider the needs of an innocent spouse or beneficiary after making its determination and may order that all or part of the benefits be paid to the spouse or beneficiary.

REVOKED BENEFITS

If an official's or employee's pension is revoked, the bill entitles him to the return of any contributions he made to it, without interest. But, the repayment cannot be made until the court determines that the official or employee has fully satisfied any judgment or court-ordered restitution related to crime against his office. If the court determines that he has not, it may deduct the unpaid amount from the individual's pension contributions.

BACKGROUND

Whistleblowers

Anyone may report illegal or unethical behavior by a large contractor or in a state or quasi-public agency to the auditors of public accounts. The auditors review, and the attorney general investigates, the matter.

Employers and other employees cannot retaliate against a whistleblower. There is a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint. Any victim of retaliation may (1) be reinstated to his former position, (2) receive back pay, (3) have his benefits reestablished to the level for which he would have been eligible but for the violation, and (4) receive reasonable attorney fees and any other damages.

Whistleblowers who act in good faith are not liable for any civil damages resulting from a disclosure made in good faith.

Legislative History

On April 18, the Senate referred the bill (File 476) to the Judiciary Committee, which (1) extends the bill's provisions on benefit reduction and revocation to state judges, (2) allows the state to seek benefit reductions and revocations for federal violations, and (3) adds the provisions on municipal whistleblowers.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/26/2007)

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 4 (04/27/2007)